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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/806,211	03/23/2004	Hiroki Hasegawa	826.1938	1684
21171	7590	09/02/2009		
STAAS & HALSEY LLP SUITE 700 1201 NEW YORK AVENUE, N.W. WASHINGTON, DC 20005			EXAMINER CLOUD, JOIYA M	
			ART UNIT 2444	PAPER NUMBER
			MAIL DATE 09/02/2009	DELIVERY MODE PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary

Application No.

10/806,211

Applicant(s)

HASEGAWA ET AL.

Examiner

Joiya M. Cloud

Art Unit

2444

Period for Reply -- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 08 May 2009.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 3-10, 12 and 14 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 3-10, 12 and 14 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-8508)
Paper No(s)/Mail Date _____
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date _____
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: _____

DETAILED ACTION

This action is responsive to the communication filed on 05/08/2009. Claims 3-10, 12 and 14 remain PENDING. Applicant's arguments have been carefully considered but are moot in view of new ground(s) or rejection, necessitated by Applicant's substantial amendments (i.e. "superposing the transitions of the past transaction occurrence amount in first and second types of cycles" and "wherein the generation device generates transitions of a mean value and a maximum value of transaction occurrence amounts regarding at least two modules in each of the plurality of types of cycles in the system...and generates the transition of the predicted transaction occurrence amount," which have affected the scope thereof.

Response to Arguments

A) "the generation device generates transitions of a mean value and a maximum value of transaction occurrence amounts regarding at least two modules in each of the plurality of types of cycles in the system, displays the generated transitions on the screen, superposes the transitions of transaction occurrence amounts in the first and second types of cycles using the mean value or the maximum value selected by the operator, and generates the transition of the predicted transaction occurrence amount" As will be explained below, at least this feature is a patentable distinction over Jackson. Moreover Applicant argues, "Jackson is silent regarding superposing the transitions of transaction occurrence amounts," and merely describe a selected time interval or a chosen time period.

As to the above argument A), Examiner respectfully disagrees. Applicant's arguments do not comply with 37 CFR 1.111(c) because they do not clearly point out the patentable novelty which he or she thinks the claims present in view of the state of the art disclosed by the references cited or the objections made. Further, they do not show how the amendments avoid such references or objections. Furthermore, Examiner submits that Applicant has merely reiterates paragraphs of Jackson and does not show how the amendments overcome the reference.

Examiner also submits that no where does Applicant's instant specification provide an explicit definition for the term "superposing," but merely recites the term once in the specification, in the following paragraph [0058]:

"In the same way, a manager selects the mean value or maximum values regarding the other cycles and the resource adjustment apparatus combines/calculates a transition of the transaction occurrence amount to be predicted in the future by superposing selected transitions (pattern) of the respective selected cycles."

The above statement provides no indication of how the transitions are superposed or what is characterized by the claimed "superposing" beyond its general definition. Furthermore, it is unclear whether superposing is related to the display of transition or a separately defined functionality and thus unclear by what means the superposing takes place. Therefore, Examiner has utilized the broadest reasonable interpretation and interpreted the term to mean setting or placing one thing over something else. Given this definition, Examiner submits that Jackson clearly teaches superposing the patterns of transaction occurrence amounts, where a user may make modifications to a displayed graph by displaying the graph with different units, so as to depict different analysis parameters, see paragraphs [0608] and [0609]. See also, Figure 20.

B) Claim 4 recites, generating transitions of “a mean value and a maximum value of transaction occurrence amounts regarding at least two modules...” Jackson does not teach or suggest these features of the claimed invention.

As to the above argument B), Examiner respectfully disagrees. Examiner submits that Jackson clearly teaches generating transitions of mean and maximum values (**paragraph [0560]-[0571]**). See where mean arithmetic is used for trend analysis to generate the patterns of mean values. See also where the “maximum utilization values out of all the blades may be displayed” on a line graph (**paragraph [0618]**). Figure 20 shows the depiction of the transitions of means and maximum values modifiable with different units (cycles), **paragraph [0608]**).

C) The dependent claims are also independently patentable. For example, as recited in claim 6, “obtaining data that represents a transition of a most-recent transaction occurrence...”, “using a transition of a use resource amount generated by the transition of the most-recent transaction occurrence amount as a transition of a immediately-after predicted use resource amount and “fluctuating an immediately-after allocation resource amount of the target module.”

As to the above argument C), argument C relies upon the fallibility of argument A. See above response to A).

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 3-10, 12, and 14 are rejected under 35 U.S.C. 102(b) as being clearly anticipated by **Jackson et al. (US Pub. No. 2002/0152305 A1)**

As per claim 3, Jackson teaches a resource adjustment apparatus for adjusting an amount of computer resources used in a system having a plurality of modules each comprising at least one application program, comprising a storage device storing data representing a transition of a past transaction occurrence amount for each of the plurality of modules, wherein the transaction occurrence amount indicates an offered load and the transition of the past transaction occurrence amount represents a variation of measurement values of the past transaction occurrence amount over a period of time (**resource utilization information**); a generation device obtaining data representing the transition of the past transaction occurrence amount of a target module of the modules from the storage device (**paragraph [0466], where Jackson discloses a comparison of analysis parameters of historical (past) resource utilization information that measure past use resources amounts and past transaction processing amounts and paragraph [0448]),** generating respective transitions of the past transaction occurrence amount in a plurality of types of cycles using the data representing the transition of the past transaction occurrence amount of the target module, displaying the generated transitions in the plurality of types of cycles on a

screen (paragraph –[0623] (e.g., hourly daily, weekly or monthly basis refer to the types of cycles), generating a transition of a predicted transaction occurrence amount of the target module in specific cycle units by superposing the transitions of the past transaction occurrence amount in first and second types of cycle selected by an operator from among the plurality of types of cycles (paragraphs [0452], lines 16-23,[0552], and [0559]-[0570]), generating a function that expresses a correlation between measurement values of a past transaction processing amount and measurement values of a corresponding past use resource amount of the target module (paragraphs [0552] and [0559]-[0570]), wherein the obtained data representing the transition of the past transaction occurrence amount is used as values of the past transaction processing amount in the function, and generating a transition of the past use resource amount by applying the function to the transition of the predicted transaction occurrence amount of the target module (paragraphs [0452], lines 16-23,[0552], and [0559]-[0570]), the transition of the past use resource amount indicating a variation of the past use resource amount over a period of time (paragraph [0448]); and an allocation device using the generated transition of the past use resource amount as a transition of a predicted use resource amount and automatically fluctuating an allocation resource amount of the target module in accordance with the transition of the predicted use resource amount, (Figure 17, paragraphs [0343], [0390], [0463], and [0466]) and wherein the generation device generates transitions of a mean value.

As per claim 4, Jackson teaches a computer-readable storage medium storing a program for a computer adjusting an amount of computer resources used in a system having a plurality of modules each consisting of at least one application program, wherein the program causes the computer to perform:

Obtaining data representing a transition of a past transaction occurrence amount of a target module of the plurality of modules from a storage device storing data representing the transition of the past transaction occurrence amount for each of the modules, wherein the transaction occurrence amount indicates an offered load and the transition of the past transaction occurrence amount over a period of time; generating respective transitions of the past transaction occurrence amount in a plurality of types of cycles using the data representing the transition of the past transaction occurrence amount of the target module; displaying the generated transitions in the plurality of types of cycles on a screen; generating a transition of a predicted transaction occurrence amount of the target module in specific cycle units by superposing the transitions of the past transaction occurrence amount in first and second types of cycles selected by an operator from among the plurality of types of cycles; generating a function that expresses a correlation between measurement values of a past transaction processing amount and measurement values of a past use resource amount of the target module and using the obtained data representing the transition of the past transaction occurrence amount as values of the past transaction processing amount in the function; generating a transition of a past use resource amount by applying the function to the transition of the predicted occurrence amount of the target module, the transition of the past use resource amount indicating a variation of the past use resource amount over a period of time and using the generated transition of the past use resource amount as a transition of a predicted use resource amount and automatically fluctuating an allocation resource amount of the target module in accordance with the transition of the predicted use resource amount, wherein the

generating the transition of the predicted transaction occurrence amount generates transitions of a mean value and a maximum value of transaction occurrence amounts regarding at least two modules in each of the plurality of types of cycles in the system; displays the generated transitions the screen; superposes the transitions of transaction occurrence amounts in the first and second types of cycles using the mean value or the maximum value selected by the operator, and generates the transition of the predicted transaction occurrence amount (**paragraphs [0452], lines 16-23,[0552], and [0559]-[0570]**).

As per claim 5, Jackson teaches a storage medium wherein the program causes the computer to perform: displaying the generated transition of the use resource amount on a screen; and when the operator changes the displayed transition of the use resource amount, using the changed transition of the use resource amount as the transition of the predicted use resource amount (**paragraphs [0623] and [0649]**).

As per claim 6, Jackson teaches a storage medium wherein the program causes the computer to perform: obtaining data that represents a transition of a most-recent transaction occurrence amount of the target module from the storage device; using a transition of a use resource amount generated by the transition of the most-recent transaction occurrence amount as a transition of a immediately-after predicted use resource amount; and fluctuating an immediately after allocation resource amount of the target module (**paragraphs [0461] and [0462]**).

As per claim 7, Jackson teaches a storage medium wherein the program causes the computer to perform: preferentially allocating resources to the target module during a period

since a use resource amount of the target module reaches a predetermined bottleneck detection threshold until a use resource amount of the target module reaches a bottleneck elimination threshold (**paragraphs [0461], [0467], and [0600]**).

As per claim 8, Jackson teaches storage medium wherein the program causes the computer to perform: preferentially allocating resources to the target module during a period since a transaction occurrence amount of the target module reaches a predetermined bottleneck detection threshold until a transaction occurrence amount of the target module reaches a bottleneck elimination threshold (**paragraph [0461], [0466], [0467] [0600]**).

As per claim 9, Jackson teaches a storage medium wherein the program causes the computer to perform: instructing the target module to generate a child processing when a predicted use resource amount of the target module reaches a predetermined amount (**paragraphs [0009], [0030], [0031]**).

As per claim 10, Jackson teaches a storage medium wherein the program causes the computer to perform: displaying a screen for capacity planning support including a transition of a use resource amount that is predicted for a long time (**paragraph [0457, [0458]**).

As per claim 12, claim 12 is substantially the same as claim 1 but in method form rather than computer-readable storage medium form. Therefore, the rejection for claim 2 applies equally as well to the rejection for claim 12.

As per claim 14, claim 14 is substantially the same as claim 2 but in apparatus form rather than computer-readable storage medium form. Therefore, the rejection for claim 2 applies equally as well to the rejection for claim 14.

CONCLUSION

THIS ACTION IS MADE FINAL. Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Joiya Cloud whose telephone number is 571-270-1146. The examiner can normally be reached Monday to Friday from on 7:30am-5:00pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, William Vaughn can be reached on 571-272-3922. The fax phone number for the organization where this application or proceeding is assigned is 571-273-3922.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published

applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

JMC

August 26, 2009

/William C. Vaughn, Jr./

Supervisory Patent Examiner, Art Unit 2444